

**UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE**

KATHERINE VEILLEUX, and )  
JENNIFER CHON, *individually and on* )  
*behalf of all others similarly situated,* )  
 )  
Plaintiffs, )  
 )  
v. )  
 )  
ELECTRICITY MAINE, LLC, PROVIDER )  
POWER, LLC, SPARK HOLDCO, LLC, )  
KEVIN DEAN, and EMILE CLAVET, )  
 )  
Defendants. )

**Case No. 1:16-cv-00571-NT**

**ANSWER OF PROVIDER POWER, LLC, KEVIN DEAN, AND EMILE CLAVET TO  
PLAINTIFFS' SECOND AMENDED COMPLAINT**

Defendants Provider Power, LLC, Kevin Dean, and Emile Clavet (collectively the “Provider Defendants”) for their answer to Plaintiffs’ Second Amended Complaint state as follows:

**INTRODUCTION**

1. Provider Defendants admit that between 2011 and 2014, Defendant Electricity Maine, LLC enrolled nearly 200,000 residents and small businesses in its electricity-supply services with the promise of substantial cost savings. Provider Defendants deny the remaining allegations contained in Paragraph 1 of the Second Amended Complaint.

**PARTIES**

2. Provider Defendants admit the allegations contained in Paragraph 2 of the Second Amended Complaint.

3. Provider Defendants admit the allegations contained in Paragraph 3 of the Second Amended Complaint.

4. Provider Defendants admit the allegation that Plaintiff Rocky Coast Family Acupuncture, P.A. is a Maine professional corporation with a place of business in South Portland, Maine.

5. Provider Defendants admit the allegations contained in Paragraph 5 of the Second Amended Complaint.

6. Provider Defendants admit that Defendant Provider Power, LLC is a Maine limited liability company with a place of business in Auburn, Maine. Provider Defendants deny the remaining allegations contained in Paragraph 6 of the Second Amended Complaint.

7. Provider Defendants admit that Spark HoldCo, LLC (“Spark”) is a Delaware limited liability company with a principal place of business in Houston, Texas, and that it purchased all outstanding membership interests in Electricity Maine from Provider Power, LLC but deny the remaining allegations contained in Paragraph 7 of the Second Amended Complaint.

8. Provider Defendants admit that Defendant Kevin Dean is an individual residing in Maine, that he is a controlling member of Provider Power, LLC, and that he has provided consulting services to Electricity Maine after the sale of Electricity Maine to Spark. Provider Defendants deny the remaining allegations contained in Paragraph 8 of the Second Amended Complaint.

9. Provider Defendants admit that Defendant Emile Clavet is an individual residing in Maine, that he is a controlling member of Provider Power, LLC and that he has provided consulting services to Electricity Maine after the sale of Electricity Maine to Spark. Provider Defendants deny the remaining allegations contained in Paragraph 9 of the Second Amended Complaint.

### **JURISDICTION AND VENUE**

**10.** Paragraph 10 of the Second Amended Complaint states a legal conclusion to which no response is required. To the extent Paragraph 9 of the Second Amended Complaint includes factual allegations, they are denied.

**11.** Paragraph 11 of the Second Amended Complaint states a legal conclusion to which no response is required. To the extent Paragraph 11 of the Second Amended Complaint includes factual allegations, they are denied.

### **GENERAL ALLEGATIONS**

**12.** Provider Defendants admits that, prior to 2000, regulated investor- and consumer-owned electric utilities in Maine enjoyed a vertical monopoly in the generation, transmission, and supply of electricity to Maine residential, commercial, and industrial consumers of electricity, but deny the remaining material allegations in Paragraph 12 of the Second Amended Complaint.

**13.** Provider Defendants admit that in 2000, the Maine Legislature enacted the Restructuring Act, 35-A M.R.S. §3201 *et seq.*, that that Act, among other things, permitted competitive electricity providers (“CEPs”) to enter the market and supply power in competition with existing providers and that under that Act, certain electricity suppliers continue to supply electricity to Maine consumers and businesses on terms known as standard offer service. Provider Defendants deny the remaining allegations contained in Paragraph 13 of the Second Amended Complaint.

**14.** Provider Defendants admit that following the enactment of 35-A M.R.S. § 320, CEPs initially marketed their services to industrial and commercial customers and in general viewed the residential electricity market as unprofitable due to the cost of transacting with

individual consumers through methods of marketing then traditionally utilized. Provider Defendants deny the remaining allegations contained in Paragraph 14 of the Second Amended Complaint.

**15.** Provider Defendants admit the allegations contained in Paragraph 15 of the Second Amended Complaint.

**16.** Provider Defendants admit that Electricity Maine's success was due in part innovative marketing and a unique business model. Provider Defendants also admit that they sometimes promoted Electricity Maine's ability to compete on price and described Electricity Maine's business as simple and straightforward, informing potential customers that "there is no catch, no gimmicks" and that the promised low rates were not "too good to be true." Provider Defendants deny the remaining allegations contained in Paragraph 16 of the Second Amended Complaint.

**17.** Provider Defendants deny the allegations contained in Paragraph 17 of the Second Amended Complaint.

**A. Fraudulent and Misleading Advertising and Promotion**

**18.** Provider Defendants admits that over a less-than-two-year period—from mid-2011 through March 2013—nearly one-third of the Maine residential and small-business electricity supply market customers chose to enroll for electricity supply service with Electricity Maine. Provider Defendants deny the remaining allegations contained in Paragraph 18 of the Second Amended Complaint.

**19.** Provider Defendants deny the allegations contained in Paragraph 19 of the Second Amended Complaint.

**20.** Provider Defendants deny the allegations contained in Paragraph 20 of the Second

Amended Complaint.

**21.** Provider Defendants deny the allegations contained in Paragraph 21 of the Second Amended Complaint.

**22.** Provider Defendants deny the allegations contained in Paragraph 22 of the Second Amended Complaint.

**23.** Provider Defendants deny the allegations contained in Paragraph 23 of the Second Amended Complaint.

**24.** Provider Defendants deny the allegations contained in Paragraph 24 of the Second Amended Complaint.

**25.** Provider Defendants admits that it borrows electricity from wholesale electricity providers, resells that electricity to residential and small-business customers, and repays the wholesalers. It also admits that standard-offer providers cannot raise rates without Public Utilities Commission approval. Provider Defendants the remaining material allegations of Paragraph 25 of the Second Amended Complaint.

**26.** Provider Defendants deny the allegations contained in Paragraph 26 of the Second Amended Complaint.

**B. Reenrollment Scheme**

**27.** Provider Defendants admit the allegations contained in Paragraph 27 of the Second Amended Complaint.

**28.** Provider Defendants admit that by late 2012 or early 2013, some of Electricity Maine's earliest customers' year-long or eighteen-month-long contracts began to expire.

**29.** Provider Defendants admit the allegations contained in Paragraph 29 of the Second Amended Complaint.

**30.** Provider Defendants deny the allegations contained in Paragraph 30 of the Second Amended Complaint.

**31.** Provider Defendants deny the allegations contained in Paragraph 31 of the Second Amended Complaint.

**32.** Provider Defendants deny the allegations contained in Paragraph 32 of the Second Amended Complaint.

**33.** Provider Defendants admit that on or about October 1, 2014, Electricity Maine sent Plaintiff Jennifer Chon an email stating in part that “To protect you from rising rates, we have secured a competitive, 24 month fixed contract for you at \$0.11394/kWh, ending on you [sic] meter date in December, 2016.” Provider Defendants deny the remaining allegations contained in Paragraph 33 of the Second Amended Complaint.

**34.** Provider Defendants are without knowledge as to whether Electricity Maine’s October 1, 2014 email appeared in Plaintiff Chon’s inbox or whether she recovered it from her spam folder in 2016. Provider Defendants admit that at that time, the standard-offer rate was approximately \$0.076/kWh. Provider Defendants deny the remaining allegations contained in Paragraph 34 of the Second Amended Complaint.

**35.** Provider Defendants deny Plaintiffs Veilleux and Rocky Coast were reenrolled at rates “greatly exceeding” the standard offer. Provider Defendants are without knowledge as to whether Plaintiff Rocky Coast was renewed by Electricity Maine during summer 2016. Provider Defendants admit that Plaintiff Veilleux has been a customer of Electricity Maine since 2012. Provider Defendants are without knowledge as to whether Plaintiff Veilleux received an email on June 28, 2017, offering her a year of service at \$0.1099/kWh. Provider Defendants admit that the standard offer rate on June 28, 2017, was \$0.06691/kWh.

**36.** Provider Defendants deny the allegations contained in Paragraph 36 of the Second Amended Complaint.

**37.** Provider Defendants deny the allegations contained in Paragraph 37 of the Second Amended Complaint.

**38.** Provider Defendants deny the allegations contained in Paragraph 38 of the Second Amended Complaint.

**CLASS ACTION ALLEGATIONS**

**39.** Paragraph 39 of the Second Amended Complaint states legal conclusions to which no response is required. To the extent Paragraph 39 of the Second Amended Complaint includes factual allegations, they are denied.

**40.** Paragraph 40 of the Second Amended Complaint states legal conclusions to which no response is required. To the extent Paragraph 40 of the Second Amended Complaint includes factual allegations, they are denied.

**41.** Provider Defendants deny the allegations contained in Paragraph 41 of the Second Amended Complaint.

**42.** Provider Defendants deny that there are numerous questions of law and fact common to Plaintiffs and the putative class.

**43.** Provider Defendants deny the allegations contained in Paragraph 43 of the Second Amended Complaint.

**44.** Provider Defendants deny the allegations contained in Paragraph 44 of the Second Amended Complaint.

**45.** Provider Defendants deny the allegations contained in Paragraph 45 of the Second Amended Complaint.

**46.** Provider Defendants deny the allegations contained in Paragraph 46 of the Second Amended Complaint.

**47.** Provider Defendants deny the allegations contained in Paragraph 47 of the Second Amended Complaint.

**48.** Paragraph 48 of the Second Amended Complaint does not include factual allegations requiring responsive pleading. Further answering, Provider Defendants request that the Court decline to certify a class in this case.

**COUNT I**  
**VIOLATION OF THE RACKETEER INFLUENCED AND CORRUPT  
ORGANIZATIONS ACT (“RICO”) – 18 U.S.C. §§ 1962(c), 1964(c)**

**49.** Provider Defendants repeat and reallege their responses to Paragraphs 1 through 48 as if fully set forth herein.

**50.** Provider Defendants deny the allegations contained in Paragraph 50 of the Second Amended Complaint.

**A. Enterprise**

**51.** Provider Defendants deny the allegations contained in Paragraph 51 of the Second Amended Complaint.

**52.** Provider Defendants deny the allegations contained in Paragraph 52 of the Second Amended Complaint.

**53.** Provider Defendants deny the allegations contained in Paragraph 53 of the Second Amended Complaint.

**54.** Provider Defendants deny the allegations contained in Paragraph 54 of the Second Amended Complaint.

**55.** Provider Defendants deny the allegations contained in Paragraph 55 of the Second



Amended Complaint.

**56.** Provider Defendants deny the allegations contained in Paragraph 56 of the Second Amended Complaint.

**57.** Provider Defendants deny the allegations contained in Paragraph 57 of the Second Amended Complaint.

**58.** Provider Defendants deny the allegations contained in Paragraph 58 of the Second Amended Complaint.

**59.** Provider Defendants admit that Emile Clavet and Kevin Dean are natural persons. Provider Defendants deny the remaining allegations contained in Paragraph 59 of the Second Amended Complaint.

**60.** Provider Defendants admit that Defendant Spark is a distinct corporate entity and that it is a Texas-based energy company. Provider Defendants deny the remaining allegations contained in Paragraph 60 of the Second Amended Complaint.

**61.** Provider Defendants deny the allegations contained in Paragraph 61 of the Second Amended Complaint.

**62.** Provider Defendants deny the allegations contained in Paragraph 62 of the Second Amended Complaint.

**63.** Provider Defendants deny the allegations contained in Paragraph 63 of the Second Amended Complaint.

**64.** Provider Defendants deny the allegations contained in Paragraph 64 of the Second Amended Complaint.

#### **B. Specific Acts of Mail and Wire Fraud**

**65.** Provider Defendants deny the allegations contained in Paragraph 65 of the Second

Amended Complaint.

**66.** Provider Defendants deny the allegations contained in Paragraph 66 of the Second Amended Complaint.

**67.** Provider Defendants deny the allegations contained in Paragraph 67 of the Second Amended Complaint.

**68.** Provider Defendants deny the allegations contained in Paragraph 68 of the Second Amended Complaint.

**69.** Provider Defendants deny the allegations contained in Paragraph 69 of the Second Amended Complaint.

**70.** Provider Defendants deny the allegations contained in Paragraph 70 of the Second Amended Complaint.

**71.** Provider Defendants admit that Maine Public Utilities Commission rules require competitive electricity providers to disclose market risks associated with their electricity supply services prior to or at the time the customer agrees to accept such services. Provider Defendants deny the remaining allegations contained in Paragraph 71 of the Second Amended Complaint.

**72.** Provider Defendants admit that between Electricity Maine's inception in 2011 and December 9, 2014, Electricity Maine represented to every customer enrolling in Electricity Maine's services that it would provide renewal notice by "Confirmation Letter." Provider Defendants further admit that Electricity Maine sent such letters to customers by whatever means the customer elected. Provider Defendants deny the remaining allegations contained in Paragraph 70 of the Second Amended Complaint.

**73.** Provider Defendants deny the allegations contained in Paragraph 73 of the Second Amended Complaint.

**74.** Provider Defendants deny the allegations contained in Paragraph 74 of the Second Amended Complaint.

**75.** Provider Defendants deny the allegations contained in Paragraph 75 of the Second Amended Complaint.

**76.** Provider Defendants deny the allegations contained in Paragraph 76 of the Second Amended Complaint.

**77.** Provider Defendants deny the allegations contained in Paragraph 77 of the Second Amended Complaint.

**78.** Provider Defendants deny the allegations contained in Paragraph 78 of the Second Amended Complaint.

**79.** Provider Defendants admit that Electricity Maine updated its Terms of Service in the regular course of its business on October 24, 2016, that the updated terms of service, which apply prospectively only, include class action waiver and arbitration provisions and that it sends out its current Terms of Service to customers with renewal notices. Provider Defendants deny the remaining allegations contained in Paragraph 79 of the Second Amended Complaint.

**80.** Provider Defendants admit that prior to the sale of Electricity Maine to Spark Holdco, LLC, it did not include an arbitration agreement or waiver language in its terms of service but deny the remaining allegations contained in Paragraph 80 of the Second Amended Complaint.

**81.** Provider Defendants deny the allegations contained in Paragraph 81 of the Second Amended Complaint.

### **C. Pattern of Racketeering**

**82.** Provider Defendants deny the allegations contained in Paragraph 82 of the Second

Amended Complaint.

**83.** Provider Defendants deny the allegations contained in Paragraph 83 of the Second Amended Complaint.

**84.** Provider Defendants deny the allegations contained in Paragraph 84 of the Second Amended Complaint.

**85.** Provider Defendants deny the allegations contained in Paragraph 85 of the Second Amended Complaint.

**86.** Provider Defendants deny the allegations contained in Paragraph 86 of the Second Amended Complaint.

**87.** Provider Defendants deny the allegations contained in Paragraph 87 of the Second Amended Complaint.

**88.** Provider Defendants deny the allegations contained in Paragraph 88 of the Second Amended Complaint.

**89.** Provider Defendants deny the allegations contained in Paragraph 89 of the Second Amended Complaint.

**C [sic]. Injury**

**90.** Provider Defendants deny the allegations contained in Paragraph 90 of the Second Amended Complaint.

**91.** Provider Defendants deny the allegations contained in Paragraph 91 of the Second Amended Complaint.

**92.** Provider Defendants deny the allegations contained in Paragraph 92 of the Second Amended Complaint.

**93.** Provider Defendants deny the allegations contained in Paragraph 93 of the Second

Amended Complaint.

**94.** Paragraph 94 of the Second Amended Complaint does not include factual allegations requiring responsive pleading. Further answering, Provider Defendants request that the Second Amended Complaint be dismissed and that they be awarded their costs and such other further relief as may be just and equitable. Provider Defendants further deny that class certification is appropriate in this matter.

## **COUNT II**

### **VIOLATION OF THE RACKETEER INFLUENCED AND CORRUPT**

#### **ORGANIZATIONS ACT (“RICO”) – 18 U.S.C. §§ 1962(d), 1964(c)**

**95.** Provider Defendants repeat and reallege their responses to Paragraphs 1 through 94 as if fully set forth herein.

**96.** Provider Defendants deny the allegations contained in Paragraph 96 of the Second Amended Complaint.

**97.** Provider Defendants deny the allegations contained in Paragraph 97 of the Second Amended Complaint.

**98.** Provider Defendants deny the allegations contained in Paragraph 98 of the Second Amended Complaint.

**99.** Provider Defendants deny the allegations contained in Paragraph 99 of the Second Amended Complaint.

**100.** Provider Defendants deny the allegations contained in Paragraph 100 of the Second Amended Complaint.

**101.** Provider Defendants are without knowledge sufficient to confirm or deny Plaintiff Rocky Coast was reenrolled in an Electricity Maine plan in the late summer of 2016, and

therefore deny the same. Furthermore, Provider Defendants are without knowledge sufficient to confirm or deny whether Plaintiff Veilleux received an email on June 28, 2017, seeking to reenroll her in an Electricity Maine plan. Provider Defendants deny the remaining allegations in Paragraph 101.

**102.** Provider Defendants deny the allegations contained in Paragraph 102 of the Second Amended Complaint.

**103.** Paragraph 103 of the Second Amended Complaint does not include factual allegations requiring responsive pleading. Further answering, Provider Defendants request that the Second Amended Complaint be dismissed and that they be awarded their costs and such other further relief as may be just and equitable. Provider Defendants further deny that class certification is appropriate in this matter.

### **COUNT III**

#### **VIOLATION OF THE MAINE UNFAIR TRADE PRACTICES ACT – 5 M.R.S. § 207**

**104.** Provider Defendants repeat and reallege their responses to Paragraphs 1 through 103 as if fully set forth herein.

**105.** Provider Defendants deny the allegations contained in Paragraph 105 of the Second Amended Complaint.

**106.** Provider Defendants deny the allegations contained in Paragraph 106 of the Second Amended Complaint.

**107.** Provider Defendants deny the allegations contained in Paragraph 107 of the Second Amended Complaint.

**108.** Provider Defendants deny the allegations contained in Paragraph 108 of the Second Amended Complaint.

**109.** Provider Defendants deny the allegations contained in Paragraph 109 of the Second Amended Complaint.

**110.** Paragraph 110 of the Second Amended Complaint does not include factual allegations requiring responsive pleading. Further answering, Provider Defendants request that the Second Amended Complaint be dismissed and that they be awarded their costs and such other further relief as may be just and equitable. Provider Defendants further deny that class certification is appropriate in this matter.

#### **COUNT IV**

#### **NEGLIGENCE**

**111.** Provider Defendants repeat and reallege their responses to Paragraphs 1 through 110 as if fully set forth herein.

**112.** Paragraph 112 of the Second Amended Complaint states a legal conclusion to which no response is required. To the extent Paragraph 109 of the Second Amended Complaint includes factual allegations, they are denied.

**113.** Provider Defendants deny the allegations contained in Paragraph 113 of the Second Amended Complaint.

**114.** Provider Defendants deny the allegations contained in Paragraph 114 of the Second Amended Complaint.

**115.** Paragraph 115 of the Second Amended Complaint does not include factual allegations requiring responsive pleading. Further answering, Provider Defendants request that the Second Amended Complaint be dismissed and that they be awarded their costs and such other further relief as may be just and equitable. Provider Defendants further deny that class certification is appropriate in this matter.

**COUNT IV**

**NEGLIGENT MISREPRESENTATION**

**116.** Provider Defendants repeat and reallege their responses to Paragraphs 1 through 115 as if fully set forth herein.

**117.** Provider Defendants deny the allegations contained in Paragraph 117 of the Second Amended Complaint.

**118.** Provider Defendants deny the allegations contained in Paragraph 118 of the Second Amended Complaint.

**119.** Provider Defendants deny the allegations contained in Paragraph 119 of the Second Amended Complaint.

**120.** Provider Defendants deny the allegations contained in Paragraph 120 of the Second Amended Complaint.

**121.** Paragraph 121 of the Second Amended Complaint does not include factual allegations requiring responsive pleading. Further answering, Provider Defendants request that the Second Amended Complaint be dismissed and that they be awarded their costs and such other further relief as may be just and equitable. Provider Defendants further deny that class certification is appropriate in this matter.

**COUNT VI**

**FRAUDULENT MISREPRESENTATION**

**122.** Provider Defendants repeat and reallege their responses to Paragraphs 1 through 121 as if fully set forth herein.

**123.** Provider Defendants deny the allegations contained in Paragraph 123 of the Second Amended Complaint.



**124.** Provider Defendants deny the allegations contained in Paragraph 124 of the Second Amended Complaint.

**125.** Provider Defendants deny the allegations contained in Paragraph 125 of the Second Amended Complaint.

**126.** Provider Defendants deny the allegations contained in Paragraph 126 of the Second Amended Complaint.

**127.** Paragraph 127 of the Second Amended Complaint does not include factual allegations requiring responsive pleading. Further answering, Provider Defendants request that the Second Amended Complaint be dismissed and that they be awarded their costs and such other further relief as may be just and equitable. Provider Defendants further deny that class certification is appropriate in this matter.

## **COUNT VII**

### **UNJUST ENRICHMENT**

**128.** Provider Defendants repeat and reallege their responses to Paragraphs 1 through 127 as if fully set forth herein.

**129.** Provider Defendants deny the allegations contained in Paragraph 129 of the Second Amended Complaint.

**130.** Provider Defendants deny the allegations contained in Paragraph 130 of the Second Amended Complaint.

**131.** Provider Defendants deny the allegations contained in Paragraph 131 of the Second Amended Complaint.

**132.** Paragraph 132 of the Second Amended Complaint does not include factual allegations requiring responsive pleading. Further answering, Provider Defendants request that

the Second Amended Complaint be dismissed and that they be awarded their costs and such other further relief as may be just and equitable. Provider Defendants further deny that class certification is appropriate in this matter.

### **COUNT VIII**

#### **BREACH OF CONTRACT**

**133.** Provider Defendants repeat and reallege their responses to Paragraphs 1 through 132 as if fully set forth herein.

**134.** Provider Defendants admit that Electricity Maine agreed to provide and provided its residential customers with notice, in accordance with Maine Public Utilities Commission rules and in the form of a “Confirmation Letter,” before those customers’ contracts for electricity supply services were automatically renewed, but deny the remaining material allegations in Paragraph 134 of the Second Amended Complaint.

**135.** Provider Defendants deny the allegations contained in Paragraph 135 of the Second Amended Complaint.

**136.** Provider Defendants deny the allegations contained in Paragraph 136 of the Second Amended Complaint.

**137.** Paragraph 137 of the Second Amended Complaint does not include factual allegations requiring responsive pleading. Further answering, Provider Defendants request that the Second Amended Complaint be dismissed and that they be awarded their costs and such other further relief as may be just and equitable. Provider Defendants further deny that class certification is appropriate in this matter.

### **JURY DEMAND**

**138.** Provider Defendants admit Plaintiffs have demanded trial by jury, but deny that Plaintiffs are entitled to trial by jury on all claims and issues pleaded.

WHEREFORE, Defendants Provider Power, LLC, Kevin Dean and Emile Clavet request the Second Amended Complaint be dismissed and that Defendants be awarded their costs and such other further relief as may be just and equitable. Provider Defendants further deny that class certification is appropriate in this matter.

### **STATEMENT OF ADDITIONAL DEFENSES**

#### **FIRST DEFENSE**

The Second Amended Complaint, in whole or in part, fails to state a claim on which relief can be granted.

#### **SECOND DEFENSE**

Plaintiffs fail to satisfy the prerequisites for maintenance of a class action under Rule 23 of the Federal Rules of Civil Procedure and applicable case law, and all class allegations should be stricken and all claims by or on behalf of a putative class should be dismissed.

#### **THIRD DEFENSE**

Plaintiffs lack standing to assert the claims stated, including the claims of the putative class.

#### **FOURTH DEFENSE**

Plaintiffs and putative class members fail to establish the prerequisites under the Racketeer Influenced and Corrupt Organizations Act in that they have failed to distinguish between the enterprise and the person engaged in the conduct of the enterprise.

#### **FIFTH DEFENSE**

Plaintiffs and putative class members fail to establish the prerequisites under the Racketeer Influenced and Corrupt Organizations Act in that they have failed to allege that the named RICO Defendants conducted the alleged enterprise beyond conducting the business in the normal course.

#### **SIXTH DEFENSE**

Plaintiffs and putative class members fail to establish the prerequisites under the Racketeer Influenced and Corrupt Organizations Act in that they have failed to sufficiently allege a pattern of predicate acts.

#### **SEVENTH DEFENSE**

Plaintiffs and putative class members fail to establish the prerequisites under the Racketeer Influenced and Corrupt Organizations Act in that they have failed to allege a scheme to defraud beyond mere puffery.

#### **EIGHTH DEFENSE**

Plaintiffs and putative class members fail to establish the prerequisites under the Racketeer Influenced and Corrupt Organizations Act in that they have failed to demonstrate that the named RICO Defendants knowingly joined a conspiracy to violate the Racketeer Influenced and Corrupt Organizations Act or that Plaintiffs were injured by the commission of an overt act in furtherance of the conspiracy.

#### **NINTH DEFENSE**

The claims of Plaintiffs and putative class members are barred, in whole or in part, because Plaintiffs have failed to allege properly the use of interstate mail or wire communications in furtherance of the alleged scheme.

**TENTH DEFENSE**

The claims of Plaintiffs and putative class members are barred, in whole or in part, because any alleged misrepresentation made by the Provider Defendants was made in good faith and for legitimate business reasons.

**ELEVENTH DEFENSE**

The claims of Plaintiffs and putative class members are barred, in whole or in part, by the parties' course of dealing.

**TWELFTH DEFENSE**

The claims of Plaintiffs and putative class members are barred, in whole or in part, by the doctrine of ratification.

**THIRTEENTH DEFENSE**

The claims of Plaintiffs and putative class members are barred, in whole or in part, by the doctrine of consent.

**FOURTEENTH DEFENSE**

The claims of Plaintiffs and putative class members are barred, in whole or in part, by accord and satisfaction.

**FIFTEENTH DEFENSE**

The claims of Plaintiffs and putative class members are barred, in whole or in part, by the doctrine of unclean hands.

**SIXTEENTH DEFENSE**

The claims of the Plaintiffs and putative class members are barred, in whole or in part, by the doctrines of waiver, disclaimer, laches, and estoppel.

#### **SEVENTEENTH DEFENSE**

The equitable claims and requests for injunctive relief of Plaintiffs and putative class members are barred because if they have a remedy at all, Plaintiffs and putative class members have an adequate remedy at law.

#### **EIGHTEENTH DEFENSE**

The claims of Plaintiffs and putative class members are barred by the applicable statute of limitations and other limitations periods.

#### **NINETEENTH DEFENSE**

The claims of Plaintiffs and putative class members are barred, in whole or in part, or recovery thereon limited, by the doctrine of comparative fault.

#### **TWENTIETH DEFENSE**

The claims of Plaintiffs and putative class members are barred, in whole or in part, by the doctrine of assumption of risk.

#### **TWENTY-FIRST DEFENSE**

The claims of Plaintiffs and putative class members are barred because Plaintiffs and putative class members cannot demonstrate actual reliance premised on any act or omission of the Provider Defendants.

#### **TWENTY-SECOND DEFENSE**

Plaintiffs and putative class members have failed to mitigate their damages.

#### **TWENTY-THIRD DEFENSE**

The Provider Defendants have complied with and performed all promises, obligations, and duties to Plaintiffs and putative class members under the contracts at issue and have fulfilled their obligations under the terms, conditions, and limitations of those contracts, thereby barring

the claims by Plaintiffs and the putative class in whole or in part.

#### **TWENTY-FOURTH DEFENSE**

The contract claims of Plaintiffs and putative class members are barred by Maine's economic loss doctrine.

#### **TWENTY-FIFTH DEFENSE**

The contract claims of the Plaintiffs and putative class members are barred by Maine's independent duty doctrine.

#### **TWENTY-SIXTH DEFENSE**

The misrepresentation and fraud claims of Plaintiffs and putative class members are barred where the complained of statements were statements of opinion, promises of future performance, mere hyperbole, and/or puffery not actionable under Maine law.

#### **TWENTY-SEVENTH DEFENSE**

The claims of the Plaintiffs and putative class members are barred, in whole or in part, because Plaintiffs have not pleaded fraud with particularity as required by Rule 9(b) of the Federal Rules of Civil Procedure.

#### **TWENTY-EIGHTH DEFENSE**

The claims of Plaintiffs and putative class members are barred, in whole or in part, by the doctrine of *in pari delicto*.

#### **TWENTY-NINTH DEFENSE**

The claims of Plaintiffs and putative class members under the Maine Unfair Trade Practices Act are barred because neither Plaintiffs nor any of the putative class members have suffered substantial pecuniary harm proximately caused by the Provider Defendants' conduct alleged to violate the Act.

### **THIRTIETH DEFENSE**

Plaintiffs and putative class members' claims are barred, in whole or in part, because the court lacks subject-matter jurisdiction and the Maine Public Utilities Commission has primary jurisdiction.

### **THIRTY-FIRST DEFENSE**

Plaintiffs and putative class members' claims are barred, in whole or in part, for failure to exhaust their administrative remedies.

### **THIRTY-SECOND DEFENSE**

The Provider Defendants have complied with the rules promulgated by Maine's Public Utilities Commission governing competitive electricity providers and the sections codified in Maine's Electric Industry Restructuring Act, thereby barring the claims by Plaintiffs and the putative class in whole or in part.

### **THIRTY-THIRD DEFENSE**

This Court should abstain from ruling on the claims of Plaintiffs and putative class members pursuant to *Burford v. Sun Oil Co.*, 319 U.S. 315 (1943), because the Plaintiffs and putative class members have a remedy with the Maine Public Utilities Commission, a complex state administrative agency, and the exercise of federal review would be disruptive of state efforts to establish a coherent policy with respect to a matter of substantial public concern.

### **THIRTY-FOURTH DEFENSE**

Certification of the putative class as requested would violate the Provider Defendants' right to due process of law under the United States and Maine Constitutions.



### **THIRTY-FIFTH DEFENSE**

Any request by Plaintiffs and putative class members for an award of putative damages should be denied because Electricity Maine's conduct was not motivated by actual malice.

### **THIRTY-SIXTH DEFENSE**

Any request by Plaintiffs and putative class members for an award of putative damages should be denied because Electricity Maine's conduct was not so outrageous that malice can be implied.

### **THIRTY-SEVENTH DEFENSE**

To the extent Plaintiffs and putative class members seek to collect compensatory damages, penalties, punitive damages, exemplary damages, attorneys' fees and expenses, and/or any other monetary relief from the Provider Defendants, Plaintiffs and putative class members seek a recovery that is so grossly excessive and inequitable that it would violate the Due Process Clause of the Fifth and Fourteenth Amendments of the United States Constitution

### **RESERVATION OF ADDITIONAL DEFENSES**

The Provider Defendants reserve and do not waive any additional or further defenses as may be revealed through discovery in this matter.

Dated: November 24, 2017

/s/ Melissa A. Hewey

Melissa A. Hewey

Amy K. Olfene

*Attorneys for Defendants Provider Power,  
LLC, Kevin Dean, and Emile Clavet*

**DRUMMOND WOODSUM**

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**CERTIFICATE OF SERVICE**

I hereby certify that on November 24, 2017, I electronically filed the above Answer with the Clerk of the Court using the CM/ECF system, which will send notification of such filings to all counsel of record.

Dated: November 24, 2017

/s/ Amy K. Olfene

Amy K. Olfene

*Attorney for Defendants Provider Power, LLC, Kevin Dean, and Emile Clavet*

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